



**U.S. Army Corps
Of Engineers**
Norfolk District

Fort Norfolk, 803 Front Street
Norfolk, Virginia 23510-1096

03-V1586

January 20, 2005

PUBLIC NOTICE

1. To Whom It May Concern: I, Colonel Yvonne J. Prettyman-Beck, District Engineer, Norfolk District, propose to issue an Order assessing a Class 1 Administrative Penalty against The Delaware Corporation for violation of a permit granted under the Section 404 of the Clean Water Act.

2. Permit Involved and Alleged Violation: Department of the Army permit number 03-V1586 was issued to Delaware Corporation on September 30, 2003, for impacts to 470 linear feet of stream and 0.242-acre of palustrine emergent wetlands associated with the construction of a commercial storage facility off Route 2/17 in Spotsylvania County, Virginia.

The permit was violated as follows:

1. To mitigate for impacts to waters and wetlands, the permittee was required to create 800 linear feet of meandering stream to include a 35-foot wide (0.242-acre) wetland riparian buffer on each side of the stream. Unauthorized changes were made to the construction plan for the stream and wetlands without prior approval or plan submittal to our office. A revised mitigation plan was requested by August 5, 2004 and received on August 10, 2004. However, the mitigation has not been completed.

2. Signs have not been placed within and/or purchased for the "Meade-Pelham" conservation area in accordance with Condition 2 of the permit. In addition, the deed restriction for the preserved area was not recorded within the 30 days of issuance of the permit.

3. Authority for Proceeding: This administrative penalty proceeding is initiated under the authority of 33 U.S.C. Section 1319(g) and 33 CFR Part 326.6. The procedure for assessing civil penalties in cases such as this is outlined in the statute and the regulation. Following the discovery and investigation of a violation of a permit, notice is given to the permittee, the appropriate State Agency, and the public. The permittee, the State, or any member of the public is afforded the opportunity to submit comments within 30 days. If requested by the permittee, a hearing will be held before a Presiding Officer who will submit a report and recommended decision to me. I will issue a Final Order on the case to the responsible party. Public participation in the hearing is permitted if a hearing is held.

4. Penalty Proposed: The amount of the penalty proposed in this case is \$5,000.00. However, this proposal is subject to revision in the interests of justice after all evidence and comments have been received and reviewed.

5. Request for Hearing: The permittee has 30 days following receipt of its notice of Proposed Penalty to request a hearing. A written request, by the permittee, for a hearing should be directed to me within this designated period and must state the specific reasons for requesting a public hearing. The request should specify, in summary form, the factual and legal issues in dispute and the specific grounds of defense. The permittee has a right to present evidence at the hearing; however, he may not challenge the permit condition(s) or limitation(s), which are the subject matter of this order.

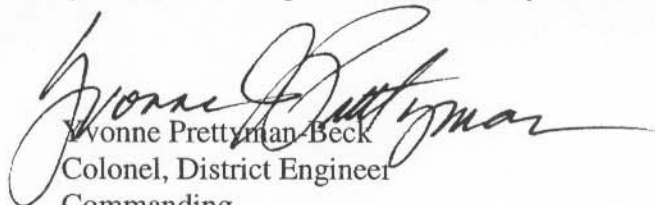
6. Comments/Administrative Record: During the 30-day comment period, any person may submit written comments on the Proposed Penalty Order. These comments should be sent to me within this designated comment period. Any submitted comments will be included in the administrative record relating to the Proposed Penalty Order. All information submitted by the permittee and persons commenting on the Proposed Order will be placed in the administrative record, which will be available for inspection during regular business hours at the Regulatory Branch, Norfolk District, U.S. Army Corps of Engineers. (The administrative record is subject to provisions of law restricting the disclosure of confidential information.)

7. Public Hearing: The permittee and all persons who file comments will be given notice of any hearing held in this case. The permittee and all commenters will have a reasonable opportunity to present evidence at the hearing, if a hearing is held.

8. Final Decision: If the permittee does not request a hearing, I may issue the Final Order on this violation on or after 30 calendar days following receipt of this formal notice by the responsible party.

9. Post Decision Hearings/Appeal: Any Final Order issued under these procedures shall become effective 30 calendar days following issuance unless (1) a petition to set aside the Order and to hold a hearing is filed by any person who commented on the Proposed Order and the petition is granted, or (2) an appeal to the United States District Court is taken under 33 U.S.C. Section 1319(g)(8).

10. If you have any questions, you may contact Ms. Regena Bronson of my staff at 540.548.2488.


Yvonne Prettyman-Beck
Colonel, District Engineer
Commanding